



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 14 अगस्त, 2018 / 23 श्रावण, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 31st March, 2018

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	244/16	Anil Kumar	GVK EMRI & others	02-01-2018
2.	204/17	Vidya Sagar	M/s Steller Pvt. Ltd	02-01-2018
3.	619/16	Sartaj Kumar	President, D.A.V.	02-01-2018
4.	272/14	Ram Kumar	M.D. HPGIC Ltd. Himrus Bhawan.	02-01-2018
5.	292/15	Chabbi Ram	D.F.O. Suket	03-01-2018
6.	289/15	Dola Ram	D.F.O. Suket	03-01-2018
7.	313/15	Duni Chand	D.F.O. Suket	03-01-2018
8.	253/15	Anant Ram	D.F.O. Suket	03-01-2018
9.	248/15	Dina Nath	D.F.O. Suket	03-01-2018
10.	311/15	Neem Chand	D.F.O. Suket	03-01-2018
11.	117/17	Tek Chand	M/s GVK EMRI & others	04-01-2018
12.	23/17	Govind Kumar	CSK HPKVV Palampur	08-01-2018
13.	25/17	Rajinder Kumar	CSK HPKVV Palampur	08-01-2018
14.	236/16	Ram Singh	E.E. HPPWD, Dharampur	08-01-2018
15.	633/16	Brahmi Devi	Er.-in-chief, HPPWD & other	08-01-2018
16.	640/16	Balam Ram	Er.-in-chief, HPPWD & other	08-01-2018
17.	639/16	Anil Kumar	Er.-in-chief, HPPWD & other	08-01-2018
18.	634/16	Prakash Chand	Er.-in-chief, HPPWD & other	08-01-2018
19.	643/16	Hem Singh	Er.-in-chief, HPPWD & other	08-01-2018
20.	641/16	Reema Devi	Er.-in-chief, HPPWD & other	08-01-2018
21.	635/16	Shakuntla Devi	Er.-in-chief, HPPWD & other	08-01-2018
22.	637/16	Meera Devi	Er.-in-chief, HPPWD & other	08-01-2018
23.	636/16	Sarda Devi	Er.-in-chief, HPPWD & other	08-01-2018
24.	740/16	Kanta Devi	Er.-in-chief, HPPWD & other	08-01-2018
25.	750/16	Seeta Devi	Er.-in-chief, HPPWD & other	08-01-2018
26.	743/16	Baldev	Er.-in-chief, HPPWD & other	08-01-2018
27.	747/16	Biri Singh	Er.-in-chief, HPPWD & other	08-01-2018
28.	681/16	Prem Singh	Er.-in-chief, HPPWD & other	08-01-2018
29.	394/16	Ashwani Kumar	E.E., HPPWD, Killar	10-01-2018
30.	45/17	Pyar Chand	Principal, Delhi Convent School	12-01-2018
31.	317/14	Nand Lal	E.E., HPPWD, Joginder Nagar	16-01-2018
32.	180/17	Govind Ram	D.F.O. Suket	17-01-2018
33.	235/16	Rajinder Kumar	Pradhan Sewa Bharti	17-01-2018
34.	182/17	Sher Singh	D.F.O.Suket	17-01-2018

35.	479/15	Hoshiar Singh	D.F.O. Palampur	23-01-2018
36.	51/16	Meda Ram	Pr. Chief Conservator of Forest	23-01-2018
37.	247/16	Raj Kumar	E.E., HPPWD, Bharmour	23-01-2018
38.	229/16	Chamno	E.E., HPPWD, Bharmour	23-01-2018
39.	234/16	Bajro	E.E., HPPWD, Bharmour	23-01-2018
40.	231/16	Garbo	E.E., HPPWD, Bharmour	23-01-2018
41.	248/16	Chain Lal	E.E., HPPWD, Bharmour	23-01-2018
42.	249/16	Rattan Chand	E.E., HPPWD, Bharmour	23-01-2018
43.	232/16	Bajro	E.E., HPPWD, Bharmour	23-01-2018

By order,
NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 244/ 2016

Sh. Anil Kumar s/o Sh. Tek Chand, r/o Village Behi, P.O. Koti, Tehsil & District Chamba. H.P.
. Petitioner.

Versus

1. The Employer/Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P. (Principal Employer).
2. The Managing Director, M/s Adecco Flexione Workforce Solutions Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab(Contractor Company)
. Respondents.

02-01-2018 Present: None for the petitioner.
Sh. Jitender Rana, adv. vice of Sh. Rajat Sahotra, Adv. Csl. for the respondent No.1.
Sh. Manish Katoch, Adv. Csl. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, (H.P.).

02-01-2018 Present: None for the petitioner.

Sh. Jitender Rana, adv. vice of Sh. Rajat Sahotra, adv. csl. for the respondent No.1.

Sh. Manish Katoch, adv. csl. for the respondent No.2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his ld. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:

02-01-2018

Sd/-

(K. K. SHARMA)*Presiding Judge,**Labour Court-cum-Industrial Tribunal,**Kangra at Dharamshala, (H.P.).*

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 204/ 2017

Sh. Vidya Sagar Agnihotri s/o Sh. Sikandar Lal Agnihotri, r/o Ward No.5, Chakra Chowk Mohalla, Nagar Panchayat Mehatpur, Basdehra, Tehsil & District Una, H.P. . *Petitioner.*

Versus

The Employer/Managing Director, M/s Steller Private Limited, Plot No. 118, Industrial Area Mehatpur, Tehsil & District Una, H.P. . *Respondent.*

02-01-2018 Present: Petitioner in person.

Sh. Rohit Panchkaran, Adv. Csl. for the respondent.

Memo of appearance has been filed on behalf of respondent. Petitioner has appeared before this Court in pursuance to notice issued. Petitioner prays for withdrawal of case against respondent. Statement on oath of petitioner recorded which reveals that petitioner has entered into compromise with respondent and that respondent had cleared all his dues and thus does not want to proceed with reference No.204/17. He has further produced copy of Aadhaar Card No. 600155404246. Original card was perused and returned. Statement as stated above recorded and placed on file. In view of the statement so made by petitioner, the reference No. 204/17 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication at its end.
5. The file, after completion be consigned to the records.

Announced:
02-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 619 /2016

Sh. Sartaj Kumar s/o Sh. Jai Ram, through Sh. N. L. Kaundal (A.R./Legal advisor) BMS,
H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

1. The President/Managing Director, D.A.V. College Management Committee, Chitra Gupta Road, New Delhi.
2. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P. . *Respondents.*

02-01-2018 Present: None for the petitioner.
Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, Adv. Csl. for the Respondents.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.)

02-01-2018 Present: None for the petitioner.
Sh. R.C. Puri, adv. vice of Sh. Rahul Gupta, Adv. Csl. for the Respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his Id. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

02-01-2018

Sd/-

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 272/ 2014

Sh. Ram Kumar s/o Sh. Lahori Ram, r/o V.P.O. Busdehra, Ward No.9, Tehsil & District Una, H.P. . *Petitioner.*

Versus

1. The Managing Director, M/S H.P.G.I.C. Ltd. Himrus Bhawan, Shimla-1.
2. The General Manager, C.L.B.P.(Unit of H.P.G.I.C.) Industrial Area, Mehatpur, District Unal, H.P.
3. Sh. Ram Singh Kanda (Government Contractor)C.L.B.P. Industrial Area, Mahatpur, District Una, H.P. . *Respondents.*

02-01-2018 Present: None for the petitioner.

Sh. Vipul Bhardwaj, Adv. Csl. for the respondents No. 1&2.

Respondent No.3 exparte as before.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala (H.P.).

02-01-2018 Present: None for the petitioner.

Sh. Vipul Bhardwaj, Adv. Csl. for the respondents No. 1&2.

Respondent No.3 exparte as before.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.47 P.M. None appearance of petitioner or his Id. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
02-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 292/2015
Date of Institution : 13-7-2015
Date of decision : 03-01-2018

Shri Chabbi Ram s/o Shri Chamaru Ram, r/o Village Dashal, P.O. Nihari, District Mandi,
H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Chabbi Ram s/o Shri Chamaru Ram, r/o Village Dashal, P.O. Nihari, District Mandi, H.P. during April, 2009 to May, 2012 and finally during June, 2012 by the Divisional Forest Officer, Suket Forest Division,

Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in April, 2009 where he continued to work till May, 2012 when his service was finally terminated in June, 2012 by a verbal order. Averments made in the claim further revealed that during this period petitioner had been given fictional breaks despite availability of funds and work and that several junior persons were also engaged by the respondent. The grievance of petitioner remains that while giving fictional breaks to petitioner by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has acted in violation of Section 9-A and 10 of the Act also by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2009 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* June, 2012 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of April, 2009 where he worked intermittently upto August, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged

in June, 2012 rather petitioner is stated to be working till September, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during April, 2009 to May, 2012 by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of the petitioner by the respondent during June, 2012 is illegal and unjustified as alleged? . . .*OPP.*
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . .*OPR.*

Relief:

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant

Issue No.3 : Discussed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2009 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in April, 2009 and is shown to be working in August, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleging therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in April, 2009 and working intermittently till August, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case, in cross-examination RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with respondent and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not

figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. The statement of said Girish Kumar has been obtained under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February, 2013 and thereafter had left the job but while issuing order Ex. PB aspect of leaving job in between was not taken into consideration. It is uncertain from evidence on record led by the petitioner if said Yashwant Singh was junior to him or not as Yashwant Singh as well as petitioner are shown to have been engaged by respondent in the month April, 2009 without any specific date. At the same time, one Amar Singh whose name is reflected at serial No.113 of seniority list Ex. PA is shown to have joined in November, 2009 who is certainly junior to petitioner and by not giving opportunity to petitioner to join duty and at the same time not following the procedure of retrenchment envisaged under Section 25-G of the Act while retrenching service of petitioner the respondent is held to have violated Sections 25-G as well as 25-H of the Industrial Disputes Act.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

Issue No. 4 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No.5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2018.

Sd/-

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 289/2015
Date of Institution : 13-7-2015
Date of decision : 03-01-2018

Shri Dola Ram s/o Shri Berstu Ram, r/o Village Bakha, P.O. Nihari, District Mandi, H.P.

. Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

Whether time to time termination of the services of Shri Dola Ram s/o Shri Berstu Ram, r/o Village Bakha, P.O. Nihari, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., during April, 2009 to May, 2012 and finally during June, 2012 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in April, 2009 where he continued to work till May, 2012 when his service was finally terminated in June, 2012 by a verbal order.

Averments made in the claim further revealed that during this period petitioner had been given fictional breaks despite availability of funds and work and that several junior persons were also engaged by the respondent. The grievance of petitioner remains that while giving fictional breaks to petitioner by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has acted in violation of Section 9-A and 10 of the Act also by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2009 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* June, 2012 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of April, 2009 where he worked intermittently upto August, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in June, 2012 rather petitioner is stated to be working till August, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW2/ A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during April, 2009 to May, 2012 by the respondent is illegal and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during June, 2012 is illegal and unjustified as alleged? . .*OPP*.
3. If issue No.1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . .*OPR*.

Relief :

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant

Issue No.3 : Discussed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy inter-se parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in April, 2009 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in April, 2009 and is shown to be working in August, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleging therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in April, 2009 and working intermittently till August, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case, in cross-examination RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with respondent and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. The statement of said Girish Kumar has been obtained under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February, 2013 and thereafter had left the job but while issuing order as shown in Ex. PB aspect of leaving job in between was not taken into consideration. It is uncertained from evidence on record led by the petitioner if said Yashwant Singh was junior to him or not as Yashwant Singh as well as petitioner are shown to have been engaged by respondent in the month April, 2009 without any specific date. At the same time, one Amar Singh whose name is reflected at serial No.113 of seniority list Ex. PA is shown to have joined in November, 2009 who is certainly junior to petitioner and by not giving opportunity to petitioner to join duty and at the same time not following the procedure of retrenchment envisaged under Section 25-G of the Act while retrenching service of petitioner the respondent is held to have violated Sections 25-G as well as 25-H of the Industrial Disputes Act.

16. Id. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly

held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

Issue No.4 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No.5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 313/2015
Date of Institution : 16-7-2015
Date of decision : 03-01-2018

Shri Duni Chand s/o Shri Chamaru Ram, r/o Village Langot, P.O. & Tehsil Nihari, District
Mandi, H.P. *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

Whether time to time termination of the services of Shri Duni Chand s/o Shri Chamaru Ram, r/o Village Langot, P.O. Nihari, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., during April, 2009 to May, 2012 and finally during June, 2012 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in April, 2009 where he continued to work till May, 2012 when his service was finally terminated in June, 2012 by a verbal order. Averments made in the claim further revealed that during this period petitioner had been given fictional breaks despite availability of funds and work and that several junior persons were also engaged by the respondent. The grievance of petitioner remains that while giving fictional breaks to petitioner by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been

illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has acted in violation of Section 9-A and 10 of the Act also by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2009 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* June, 2012 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of April, 2009 where he worked intermittently upto August, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in June, 2012 rather petitioner is stated to be working till August, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during April, 2009 to May, 2012 by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of the petitioner by the respondent during June, 2012 is illegal and unjustified as alleged? . . .*OPP.*
3. If issue No.1 & issue No. 2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . . .*OPR.*

Relief :

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant

Issue No.3 : Discussed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in April, 2009 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in April, 2009 and is shown to be working in August, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleging therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagers who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in April, 2009 and working intermittently till August, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case, in cross-examination RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with respondent and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to

mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. The statement of said Girish Kumar has been obtained under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB was issued. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 and worked till February, 2013 and thereafter had left the job but while issuing order Ex. PB aspect of leaving job in between was not taken into consideration. It is uncertain from evidence on record led by the petitioner if said Yashwant Singh was junior to him or not as Yashwant Singh as well as petitioner are shown to have been engaged by respondent in the month April, 2009 without any specific date. At the same time, one Amar Singh whose name is reflected at serial No.113 of seniority list Ex. PA is shown to have joined in November, 2009 who is certainly junior to petitioner and by not giving opportunity to petitioner to join duty and at the same time not following the procedure of retrenchment envisaged under Section 25-G of the Act while retrenching service of petitioner the respondent is held to have violated Sections 25-G as well as 25-H of the Industrial Disputes Act.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial

engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

Issue No.4 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No. 5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 253/2015
Date of Institution : 10-6-2015
Date of decision : 03-01-2018

Shri Anant Ram s/o Shri Khub Ram, r/o Village Kuftu, P.O. Rakol, District Mandi, H.P.
. *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Anant Ram s/o Shri Khub Ram, r/o Village Kuftu, P.O. Rakol, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during August, 2009 to February, 2013 and finally during March, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in August, 2009 where he continued to work till February, 2013 when his service was finally terminated in March, 2013 by a verbal order. Averments made in the claim further revealed that during this period petitioner had been given fictional breaks despite availability of funds and work and that several junior persons were also engaged by the respondent. The grievance of petitioner remains that while giving fictional breaks to petitioner by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were

retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has acted in violation of Section 9-A and 10 of the Act also by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2009 to 2013 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* March, 2013 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of August, 2009 where he worked intermittently upto July, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wagers junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in March, 2013 rather petitioner is stated to be working till July, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14,

copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW- 2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27.4.2016 for determination:

1. Whether time to time termination of the services of petitioner during August, 2009 to February, 2013 by the respondent is illegal and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during March, 2013 is illegal and unjustified as alleged? . .*OPP*.
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . .*OPR*.

Relief:

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant

Issue No.3 : Discussed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in August, 2009 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in August, 2009 and is shown to be working in July, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleging therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagers who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in August, 2009 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case, in cross-examination RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with respondent and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to

mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. The statement of said Girish Kumar has been obtained under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB *qua* regularization was issued. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 who worked till February, 2013 and thereafter had left the job but while issuing regularization his service as reflected in Ex. PB aspect of leaving job has not been taken into consideration. It can be safely gathered from evidence on record that petitioner had joined in the month of August, 2009 but Yashwant Singh who is claimed to be joined in April, 2009 and was senior to petitioner. At the same time one Amar Singh whose name is reflected at serial No.113 of seniority list Ex. PA is shown to have joined in November, 2009 who is certainly junior to petitioner and by not giving opportunity to petitioner to join duty and at the same time not following the procedure of retrenchment envisaged under Section 25-G of the Act while retrenching service of petitioner the respondent has violated Sections 25-G as well as 25-H of the Industrial Disputes Act.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial

engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues no. 1 and 2 & 3 are decided accordingly.

Issue No.4 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No.5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 248/2015
Date of Institution : 10-6-2015
Date of decision : 03-01-2018

Shri Dina Nath s/o Shri Murat Ram, r/o Villge Gad, P.O. Nihari, District Mandi, H.P.
. *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

Whether time to time termination of the services of Shri Dina Nath s/o Shri Murat Ram, r/o Village Gad, P.O. Nihari, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., during May, 2009 to April, 2012 and finally during May, 2012 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in May, 2009 where he continued to work till April, 2012 when his service was finally terminated in May, 2012 by a verbal order. Averments made in the claim further revealed that during this period petitioner had been given fictional breaks despite availability of funds and work and that several junior persons were also engaged by the respondent. The grievance of petitioner remains that while giving fictional breaks to petitioner by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department,

the workers employed with the petitioner who were junior to him were retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has acted in violation of Section 9-A and 10 of the Act also by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2009 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* April, 2012 has become in-fructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wagers was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of May, 2009 where he worked intermittently upto March, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wagers junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in May, 2012 rather petitioner is stated to be working till March, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits alongwith continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14,

copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27.4.2016 for determination:

1. Whether time to time termination of the services of petitioner during May, 2009 to April, 2012 by the respondent is illegal and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during May, 2012 is illegal and unjustified as alleged? . .*OPP*.
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . .*OPR*.

Relief :

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant

Issue No.3 : Discussed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by Id. Counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in May, 2009 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in May, 2009 and is shown to be working in March, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleging therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagers who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in June, 2009 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case, in cross-examination RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with respondent and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, Id. Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no

explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. The statement of said Girish Kumar has been obtained under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB *qua* regularization was issued. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 who worked till February, 2013 and thereafter had left the job but while issuing regularization his service as reflected in Ex. PB aspect of leaving job has not been taken into consideration. It can be safely gathered from evidence on record that petitioner had joined in the month of May, 2009 but Yashwant Singh who is claimed to be joined in April, 2009 and was senior to petitioner. At the same time one Amar Singh whose name is reflected at serial No. 113 of seniority list Ex. PA is shown to have joined in November, 2009 who is certainly junior to petitioner and by not giving opportunity to petitioner to join duty and at the same time not following the procedure of retrenchment envisaged under Section 25-G of the Act while retrenching service of petitioner the respondent has violated Sections 25-G as well as 25-H of the Industrial Disputes Act.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

Issue No.4 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month

in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No.5 :

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was infructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 311/2015
Date of Institution : 16-7-2015
Date of decision : 03-01-2018

Shri Neem Chand s/o Shri Chajju Ram, r/o VPO Balag, Sunder Nagar, District Mandi, H.P.
. *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
: Sh. Sunit Thakur, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Neem Chand s/o Shri Chajju Ram, r/o V.P.O. Balag, Sunder Nagar, District Mandi, H.P. during June, 2009 to September, 2012 and finally during October, 2012 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner had been engaged as daily wage beldar by the Forest Division Suket at Sunder Nagar in the year 2000 where he continued to work till September, 2012 when his service was finally terminated in October, 2012 by a verbal order. Averments made in the claim further revealed that during this period petitioner had been given fictional breaks despite availability of funds and work and that several junior persons were also engaged by the respondent. The grievance of petitioner remains that while giving fictional breaks to petitioner by respondent, juniors were recruited/retained and were placed in the seniority list whereas name of the petitioner did not figure in the seniority list so prepared by the respondent. It is further alleged that petitioner had been sincerely working with the department and has been illegally terminated from service without any written notice as required under law and at the same time no retrenchment compensation was paid moreover nothing in writing was communicated to petitioner *qua* time to time break which had been done by respondent in violation of provisions of Industrial Disputes Act. Not only this, at the time of oral termination by the respondent/department, the workers employed with the petitioner who were junior to him were retained who continued to work and their service had also been regularized by the respondent. It is stated that while terminating service of petitioner, principle of 'Last come First go' was not followed which was manifestly in violation of provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). It is also alleged that respondent has acted in violation of Section 9-A and 10 of the Act also by employing petitioner on work order/bill basis and the respondent itself unilaterally changed service condition without any notice to petitioner. As such, it is stated that respondent had violated provisions of Schedule 4 of the Act which was in

contravention of Section 9A of the Act. Accordingly, feeling aggrieved with his time to time termination ever since 2009 to 2012 and thereafter final termination, the petitioner has prayed to set aside illegal termination order as well as fictional breaks so given in the service record of petitioner and prayer has been made to direct respondent to reinstate petitioner with full back wages, continuity in service with all consequential benefits. It also further remains the prayer of the petitioner that uninterrupted service of petitioner be counted towards his continuous service and the respondent be directed to consider the period of continuous service for the purpose of work charge/regular status in view of judgment of Hon'ble Apex Court.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, reference regarding final termination *w.e.f.* October, 2012 has become infructuous as petitioner had been working intermittently with the department who had never been retrenched as alleged by petitioner in his claim petition. On merits, it has been contended that several daily wagers like petitioner had been engaged depending on the requirement of work and funds available and that seniority of these daily wager was being maintained by respondent so as to follow principle of 'Last come First go'. It is contended that petitioner was engaged in Jhungi Forest Range Suket Forest Division in the month of June, 2009 where he worked intermittently upto July, 2015 as per the mandays chart on record. Denying to have given any fictional break to the petitioner, it has been contended that petitioner of his own worked and left the job however respondent while engaging casual labourers had to consider work and funds available with department. It has been denied that any daily wager junior to petitioner had been engaged in violation of mandate of Section 25-G of the Act. It has been denied that service of petitioner had been terminated as alleged in reference which reveals that service of petitioner had been disengaged in October, 2012 rather petitioner is stated to be working till July, 2015 intermittently but petitioner at no point of time had completed 240 days in any calendar year who did not fulfill condition of Section 25-B of the Act. In so far as violation of provisions of Section 9A and 10 of the Act is concerned, it is contended that petitioner had been working intermittently on the bill basis subject to availability of works and funds as per notification No. FFE-B-C(1)-35/2009 dated 28.4.2009 and there had been no violation of provisions of Section 9A and 10 of the Act. The respondent has contested the petition also on the ground that petitioner was gainfully employed being an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denying contentions raised by the respondent. Asserted that respondent/department had arbitrarily changed service condition of petitioner who had also violated principle of 'first come last go'. Accordingly, while praying for allowing the petition, the petitioner has prayed for reinstatement, back wages for the breaks given by respondent and seniority from date of engagement and as per the statement made by the authorized representative of the respondent before Conciliation Officer and past service benefits along-with continuity with compensation.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/A. Ld. Counsel for petitioner has tendered/proved Ex. PW2/A-1 to A-4 copy of proceedings, information obtained under RTI Ex. PW2/A-5 to A-14, copy of list of daily wage workers recruited in 2009 Ex. PW2/A-15, copy of reference of Yashwant Singh Ex. AW-2/A-16, copy of notification Ex. AW-2/A-17, copy of regularization list of daily wage workers of DFO Suket Ex. AW-1/A-18 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Suneet Bharwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 29.3.2016 for determination:

1. Whether time to time termination of the services of petitioner during June, 2009 to September, 2012 by the respondent is illegal and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during October, 2012 is illegal and unjustified as alleged? . .*OPP*.
3. If issue No.1 & issue No.2 or both are proved in affirmative, to what relief petitioner is entitled to? . .*OPP*.
4. Whether the claim petition/reference is not maintainable in the present form as alleged? . .*OPR*.
5. Whether the claim petition has become infructuous as alleged. If so, its effect? . .*OPR*.

Relief :

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant

Issue No.3 : Discussed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that relief of final termination had not been pressed by ld. counsel for the petitioner as he had made statement before this court on 04.12.2017 that he did not press relief for final termination as mentioned in the reference so received from appropriate govt. As such, relief *qua* final termination is dismissed as not pressed however the controversy *inter-se* parties remains only with regard to time to time termination which requires to be adjudicated.

12. It is not in dispute before me that petitioner had been engaged as daily wage beldar in the year 2009 who continued to work even after receipt of reference from the government. Mandays chart Ex. RW1/B further strengthens the plea of petitioner that he had been engaged in June, 2009 and is shown to be working in July, 2015 as well. This document apparently shows that petitioner had not been regularly engaged by respondent rather he had been engaged for limited number of days in a month. Tentative seniority list of daily wage beldar Ex. PA of Suket Forest Division as on 31.3.2014 does not reflect name of petitioner. No reliable explanation has been put forth by RW1 for not incorporating name of petitioner except that petitioner did not complete 240 days in a year.

13. Stepping into witness box as PW1 sworn in affidavit Ex. PW1/A alleging therein that he had been given fictional breaks by the respondent despite sufficient works and funds available. It has also been specifically alleged that when fictional breaks had been given to petitioner daily wagger who were junior to the petitioner were retained by respondent as shown in the seniority list but name of petitioner was not entered in the seniority list Ex. P-A. In cross-examination, petitioner has denied that no persons junior to him had been retained by respondent however admitted that name of one Baldev shown in para 10 of the affidavit had not been mentioned in his claim petition. RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket, Sunder Nagar has although endorsed claim of petitioner *qua* his engagement in June, 2009 and working intermittently till July, 2015 although subject to availability of works and funds besides same has been reflected in mandays chart on record but consistently maintained that petitioner used to not regularly work who of his own sweet will used to come on duty and thus respondent has made endeavour to establish that petitioner had factually abandoned the job during the period when fictional breaks had been given to him. In any case, in cross-examination RW1 has admitted that no notice was given to petitioner to join duty during the break period or when petitioner allegedly abandoned work with respondent and at the same time, no departmental action was taken against petitioner even when petitioner had been invariably absenting as per the version of respondent. RW1 has further shown ignorance about seniority list *qua* daily wage beldar who had completed 240 days or more had been incorporated in seniority list however, specifically admitted that in seniority list, the name of petitioner did not figure. It may be noted that in seniority list Ex. P-A (containing eight pages both side) is tentative seniority list as on 31.3.2014 of Suket Forest Division and in this list, name of petitioner did not figure. It further remains the case of the petitioner that demand notice Ex. PW2/A-1 was issued to the Divisional Forest Officer, Suket Forest Division raising industrial dispute in which allegation of principle of 'Last come First go' having not been followed was against respondent while temporarily retrenching service of petitioner and thereafter giving artificial breaks deliberately.

14. In so far as the plea of abandonment is concerned, *Id.* Dy. D.A. for respondent has contended with vehemence that petitioner had left the job of his own sweet will. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no *iota* of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to join duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no *iota* of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that even no explanation of petitioner was called, or show cause notice was issued by respondent *qua* absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits and at the same time the respondent could not plead ignorance *qua* proceedings which were required to be taken when intermittent breaks were being given to the

petitioner and as such, plea of fictional breaks having been given as stated above is liable to be accepted.

15. Another aspect highlighted by the petitioner remains when in cross-examination RW1 Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division has admitted one Yashwant Singh was stated to have been regularized by the department and Ex. PB was the order of regularization. The petitioner has also led reliable evidence on record showing that during conciliation proceedings said Yashwant Singh was assured to be regularized who was junior to petitioner. It has also come in evidence that petitioner during conciliation proceeding before Labour Inspector, Sunder Nagar was assured of being regularized as is evident of statement of Girish Kumar Block Forest Officer. The statement of said Girish Kumar has been obtained under RTI Act Ex. PW2/A-4 in which said Girish Kumar had made statement before Conciliation Officer that petitioner would be regularized and his name shall be incorporated in the seniority list. The petitioner has claimed that despite assurance of responsible officer of forest department as stated above, respondent had regularized instead a failure report was submitted by Conciliation Officer before the appropriate government whereas said Yashwant Singh who too was similarly situated had been given assurance before Conciliation Officer as has come in the evidence on record for which office order Ex. PB *qua* regularization was issued. Ex. PW2/A-9 shows that Yashwant Singh initially engaged in April, 2009 who worked till February, 2013 and thereafter had left the job but while issuing regularization his service as reflected in Ex. PB aspect of leaving job has not been taken into consideration. It can be safely gathered from evidence on record that petitioner had joined in the month of June, 2009 but Yashwant Singh who is claimed to be joined in April, 2009 and was senior to petitioner. At the same time one Amar Singh whose name is reflected at serial No.113 of seniority list Ex. PA is shown to have joined in November, 2009 who is certainly junior to petitioner and by not giving opportunity to petitioner to join duty and at the same time not following the procedure of retrenchment envisaged under Section 25-G of the Act while retrenching service of petitioner the respondent has violated Sections 25-G as well as 25-H of the Industrial Disputes Act.

16. Ld. Counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time as has come in evidence to the petitioner which is illegal and unjustified. As the petitioner himself has not discharged initial onus *qua* having remained unemployed during intermittent break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issues No. 1 and 2 & 3 are decided accordingly.

Issue No.4 :

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since

petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No.5:

18. Ld. Dy. D.A. representing respondent had contended that claim of petitioner was in fructuous as the petitioner had worked with the respondent after 2012. As has come in my findings in foregoing paras that petitioner had worked with the respondent/department after 2012, as such claim of petitioner has become partly infructuous *qua* final termination. Hence, this issue is partly decided in affirmative in favour of petitioner against the respondent.

Relief :

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. 117/ 2017

Sh. Tek Chand s/o Sh. Balak Ram, r/o Village Jagnath, P.O. Alathu, Tehsil Sadar, District Mandi, H.P.
. Petitioner.

Versus

1. The Employer/Managing Director, M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office).
2. The Employer, M/s Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area, Mohali (Area Office).
3. The Managing Director, M/s Adecco India Private Limited, No.2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore (Corporate Office) . *Respondents.*

04-01-2018 Present: None for the petitioner.
None for the respondent No.1.
Sh. Manish Katoch, Adv. Csl. for the respondent No.2 & 3.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.34 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

04-01-2018 Present: None for the petitioner.
None for the respondent no.1.
Sh. Manish Katoch, adv. csl. for the respondent no.2&3.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
04-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref: No. 23/2017

Sh. Govind Kumar s/o Sh. Subh Karan, r/o Village and Post Office Arth (Zikli), Tehsil Palampur, Distt. Kangra, H.P. .*Petitioner.*

Versus

1. The Vice Chancellor, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, Distt. Kangra, H.P.
2. The Registrar, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, Distt. Kangra, H.P. .*Respondents.*

08-01-2018 Present: None for the petitioner.
Smt. Rajni Katoch, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).*

08-01-2018 Present: None for the petitioner.
Smt. Rajni Katoch, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
08-01-2018

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, (H.P.)**

Ref. No. 25/ 2017

Sh. Rajinder Kumar s/o Sh. Ram Parsad, r/o Village Latwala, P.O. Bagora, Tehsil Palampur, Distt. Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, Distt. Kangra, H.P.
2. The Registrar, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, Distt. Kangra, H.P. . *Respondents.*

08-01-2018 Present: None for the petitioner.
Smt. Rajni Katoch, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

08-01-2018 Present: None for the petitioner.
Smt. Rajni Katoch, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
08-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 236/2016
Date of Institution : 21-04-2016
Date of Decision : 08-01-2018

Shri Ram Singh Alias Ram Lal s/o Shri Sunder Singh, r/o Village Jhareda, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Ram Singh Alias Ram Lal s/o Sh. Sunder Singh, Village Jhareda, P.O. Hyun Pehad, Tehsil Sarkaghat, Distt. Mandi H.P. from 10/1999 by the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as Blacksmith on daily wages basis from 07/1999 to 9/1999 only for 83 days and has raised his industrial dispute *vide* demand notice dated 29.09.2014 after 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as blacksmith *w.e.f.* July, 1999 where he continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of

petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 29.9.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 7/1999 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 19.7.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent from October, 1999 is/was illegal and unjustified as alleged? . . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1, 2 AND 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of October, 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* July, 1999 on muster roll basis as beldar who continued to work till September, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 83 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 83 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had

not worked for more than 240 days ever since July, 1999 till October, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 29.9.2014 after about 14 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting

that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of August, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute

may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable

in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **three months** who was non-skilled worker ageing 53 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 83 days from the year July, 1999 to September, 1999 irrespective of fact that demand notice was issued after a period of 15 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lumpsum compensation of Rs.20,000/- (Rupees twenty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 633/2016

Date of Institution : 09-9-2016

Date of Decision : 08-01-2018

Smt. Brahmi Devi w/o Shri Tek Chand, r/o Village Ludhiana, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Brahmi Devi w/o Shri Tek Chand, r/o Village Ludhiana, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. during 12/1999 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan Shimla H.P. (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 17-03-2015 after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 56 days during year 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of, January, 1999 where she continued to work upto December, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order *w.e.f.* 12/1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the

provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Ruma Devi on 20.5.2014 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 17.3.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 12/1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 06/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondents during December, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of June, 1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till June, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had

completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 169 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 169 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in June, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence

suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on June, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of**

H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On

this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 50 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 169 days in a year irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 640/2016
Date of Institution : 09.9.2016
Date of Decision : 08.01.2018

Shri Balam Ram s/o Shri Haru Ram, r/o Village Banehardi, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Balam Ram s/o Sh. Haru Ram, Vill. Banehardi, P.O. Hyun Pehad, Tehsil, Sarkaghat, Distt. Mandi, H.P. during 1/2000 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1999 to 12/1999, only for 56 days, and has raised his industrial dispute *vide* demand notice dated 13.4.2015 after more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1999 where he continued to work upto December, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and

Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 13.4.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1999 who intermittently worked upto 12/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondent during January, 2000 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
6. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of January, 2000 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* November, 1999 on muster roll basis as beldar who continued to work till December, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 56 days in the year 1999. Even if we look at the mandays chart, this would show that

immediately preceding his termination in 1999, petitioner has factually worked for 56 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since November, 1999 till December, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after December, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 13.4.2015 after about 15 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S.**

Rajashekara and State Bank of Mysore and another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs. 4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of January, 2000 and the industrial

dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person

working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 50 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 56 days in the months of November & December, 1999 irrespective of fact that demand notice was issued after a period of 15 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.20,000/- (Rupees twenty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, (H.P.).*

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 639/2016

Date of Institution : 09-9-2016

Date of Decision : 08-01-2018

Shri Anil Kumar s/o Shri Roshan Lal, r/o Village Strehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Anil Kumar s/o Sh. Roshan Lal, Vill. Strehar, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 6/1999 by the Engineer-in-Chief, HPPWD, US Club, Shimla-(2) the Executive Engineer, HPPWD Division, Dharampur, Distt. Mandi, H.P., who had worked as beldar on daily wages basis during the 5/1999 to 6/199 only for 30.5 days and has raised his industrial dispute *vide* demand notice dated 15.6.2015 after more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of May, 1999 where he continued to work upto June, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this,

the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 15.6.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 5/1999 who intermittently worked upto 6/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondent during June, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
7. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
8. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding lump sum compensation of Rs.17,500/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of June, 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* May, 1999 on muster roll basis as beldar who continued to work till June, 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not

followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 30.5 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 30.5 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since May, 1999 till June, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 15.6.2015 after about 15 years and

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18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of June, 1999 and the industrial

dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person

working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 37 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 18 days in the month of June, 1999 irrespective of fact that demand notice was issued after a period of 15 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.17,500/- (Rupees seventeen thousand five hundred only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.17,500/- (Rupees seventeen thousand five hundred only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 634/2016
Date of Institution : 09-9-2016
Date of Decision : 08-01-2018

Shri Prakash Chand s/o Shri Swami Ram, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Prakash Chand s/o Sh. Swami Ram, Vill. Banehardi, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. during 11/1998 by the Engineer-in-Chief, HPPWD, US Club, Shimla-2, (2) the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P., who had worked as beldar on daily wages basis during the 11/1998 only for 18 days, and has raised his industrial dispute *vide* demand notice dated 24.1.2015 after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where he continued to work upto November, 1998 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1998 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of

petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 24.1.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1998 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 11/1998. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondent during November, 1998 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
9. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
10. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of November, 1998 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* November, 1998 on muster roll basis as beldar who continued to work till November, 1998 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 18 days in the year 1998. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1998, petitioner has factually worked for 18 days in 1998

prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since November, 1998 till November, 1998 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1998. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after November, 1998 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 24.1.2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner

remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of November, 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld.AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble**

High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On

this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one month** who was non-skilled worker ageing 44 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 18 days in the month of November, 1998 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 643/2016

Date of Institution : 09.9.2016

Date of Decision : 08.01.2018

Shri Hem Singh s/o Shri Tihenu Ram, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Hem Singh s/o Sh. Tihenu Ram, Vill. Banehardi, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. during 11/1998 by the Engineer-in Chief, HPPWD, US Club, Shimla-2, (2) the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P., who had worked as beldar on daily wages basis during the 11/1998 only for 18 days, and has raised his industrial dispute *vide* demand notice dated 24.1.2015 after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November, 1998 where he continued to work upto November, 1998 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1998 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some

juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of re-employment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 24.1.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1998 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 11/1998. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondent during November, 1998 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of November, 1998 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* November, 1998 on muster roll basis as beldar who continued to work till November, 1998 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25 G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 18 days in the year 1998. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1998, petitioner has factually worked for 18 days in 1998

prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since November, 1998 till November, 1998 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1998. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after November, 1998 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 24.1.2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner

remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of November, 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble**

High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On

this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one month** who was non-skilled worker ageing 44 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 18 days in the month of November, 1998 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3:

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 641/2016

Date of Institution : 09-9-2016

Date of Decision : 08-01-2018

Smt. Reema Devi w/o Shri Prem Singh, r/o Village Langehar, P.O. Giun, Tehsil Sarkaghat,
District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Reema Devi w/o Shri Prem Singh, r/o Village Langehar, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. during 10/1999 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan Shimla H.P. (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 15.3.2015 after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 140 days during year 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as Beldar in the year 1999 where she continued to work upto October, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order *w.e.f.* September, 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not

followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Ruma Devi on 20.5.2014 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 10/1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 5/1999 who intermittently worked upto 10/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondents during October, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether claim petition is bad on account of delay and laches as alleged.? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of October, 1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of May, 1999 on muster roll basis as beldar who continued to work till October, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent.

Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 140 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 169 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25 H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in October, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after October, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view

of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar

view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. *Ld. Dy. D.A.* has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, *Id. Authorized Representative* for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the *Ld. Dy. D.A.* is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one year** who was

non-skilled worker ageing 42 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 140 days in a year irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 635/2016

Date of Institution : 09-09-2016

Date of Decision : 08-01-2018

Smt. Shakuntla Devi w/o Shri Janak Dass, r/o Village Strehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Shakuntla Devi w/o Sh. Janak Dass, Vill. Strehar, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, during 9/1999 by (1) the Engineer-in Chief HPPWD, Nirman Bhawan, Shimla-2, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the years 11/1998 to 9/1999, only for 259.5 days, and has raised her industrial dispute *vide* demand notice dated 29.5.2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 11/1998 where she continued to work upto 9/1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order *w.e.f.* 9/1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for

further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 9/1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1999 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleged that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.03.2017 for determination:

1. Whether termination of the services of petitioner by the respondents from September, 1999 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *. .OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? *. .OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . . . OPR.

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 9/1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 49 days in the year 1999 and 210 ½ days in 1998. Even if we look at the mandays chart, this would show that immediately preceding her termination in 1999, petitioner has factually worked for 49 days in 1998 and 210 ½ days in 1999 aggregating to 259 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons

fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 29.5.2015 after about fifteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has

been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 47 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 259 ½ days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four

months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 637/2016

Date of Institution : 09-9-2016

Date of Decision : 08-01-2018

Smt. Meera Devi w/o Shri Raghu Ram, r/o Village Putli Falad, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Meera Devi w/o Shri Raghu Ram, r/o Village Putli Falad, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. during 09/1999 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan Shimla H.P. (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 15-3-2015 after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 205 days during year 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of, January, 1999 where she continued to work upto September, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order *w.e.f.* 9/1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Ruma Devi on 20.5.2014 but petitioner had not given any opportunity of reemployment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour

Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* 9/1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 09/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.3.2017 for determination:

1. Whether termination of the services of petitioner by the respondents during September, 1999 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

4. Whether claim petition is bad on account of delay and laches as alleged? . . . OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of September, 1999 *qua* her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 205 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 205 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental

inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in June, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent

authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 52 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 205 days in a year irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 636/2016
Date of Institution : 09-09-2016
Date of Decision : 08-01-2018

Smt. Sarda Devi w/o Shri Bhag Singh, r/o Village & P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P.*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Sarda Devi w/o Sh. Bhag Singh, Village & P.O. Dhawali, Tehsil Sarkaghat, Distt. Mandi, H.P. during 9/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2 (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 8/1998 to 9/1999, only for 359 days, and has raised her industrial dispute *vide* demand notice dated 29.5.2015 after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* August, 1998 where she continued to work upto September 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order *w.e.f.* September 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 29.5.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* September 1999 without compliance with mandatory provision of Industrial

Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 8/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleged that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.03.2017 for determination:

1. Whether termination of the services of petitioner by the respondents from September 1999 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 9/1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of August 1998 on muster roll basis as beldar who continued to work till September 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 138 ½ days in the year 1998 and 220 ½ days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in September 1999, petitioner has factually worked for 138 ½ days in 1998 and 220½ days in 1999 aggregating to 359 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since August, 1998 till September 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental

proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 29.5.2015 after about sixteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said

judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Id. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making

reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found to be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 45 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 359 days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22 As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 740/2016
Date of Institution : 18-11-2016
Date of Decision : 08-01-2018

Smt. Kanta Devi w/o Shri Revat Ram, r/o village Balaheda, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla (2)
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Kanta Devi w/o Sh. Revat Ram, Vill. Balaheda, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P. during 3/1999 by (1) the Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla-2 (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 11/1998 to 3/1999, only for 103 days, and has raised her industrial dispute *vide* demand notice dated 13.4.2015 after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of November 1998 where she continued to work upto April 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order *w.e.f.* April 1999 without prior permission and one month's notice and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999) and Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) have been retained in service whereas the services of petitioner had been dispensed with. The grievance of petitioner further revealed that after termination of services of petitioner so many new hands had been engaged by the respondent/department, the names of persons subsequent Ajay Kumar on 1.12.2003, Pradeep Kumar on 23.11.2007, Lekh Raj on 11/2004 and Ruma Devi on 20.5.2014 but petitioner had not given any opportunity of re-employment by the respondent establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner she raised industrial dispute *vide* demand notice dated 13.4.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not be resolved the dispute and failure report under Section 12(4) of the Industrial Disputes Act was made and the matter was referred to appropriate government *i.e.* Labour Commissioner who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh Vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* April 1999 without complying with the necessary provisions of the Industrial Disputes Act, 1947 which was illegal and unjustified and against the mandatory provisions of the Act. Accordingly, prayed has been made to set aside the illegal termination order of petitioner directed the respondent to reinstate the petitioner with full back wages, seniority, continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 3/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent remained that petitioner had

left the job at her own sweet will. It is maintained that petitioner had left the job prior to retrenchment of the other workers and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013 Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2.8.017 for determination:

1. Whether termination of services of the petitioner by the respondents during March 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether claim petition suffers from the vice of delay and laches as alleged.? . . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order in the month of March, 1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November 1998 on muster roll basis as beldar who continued to work till March 1999 when her services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to her termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000) and Inder Singh (1.1.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 123 days in the years 1998 & 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination petitioner has factually worked for 123 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not be required to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004

whereas petitioner had been retrenched in March, 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1998 to 1999 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner, it could not be construed in any manner that termination of petitioner was illegal. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning and petitioner as PW1 has nowhere stated that she had opted out for job when terminated from service. As such, it is held that after her termination she was not in any type of job and cross-examination of PW1 reveals that she had not been engaged in cultivation of her land after termination besides also working as labourer earning wages. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Industrial Disputes Act whereas the petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that she was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial

dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on March 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to

decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two year** who was non-skilled worker ageing 45 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 123 days in a year irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority and past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 750/2016
Date of Institution : 18-11-2016
Date of Decision : 08-01-2018

Smt. Seeta Devi w/o Shri Amar Singh, r/o Village Satrehar, P.O. Dharampur, Sub Tehsil Dharampur, District Mandi, H.P. . Petitioner.

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Seeta Devi w/o Shri Amar Singh, r/o Village Satrehar, P.O. Dharampur, Sub-Tehsil Dharampur, District Mandi, H.P. during 09/1999 by (i) the Engineer-in-Chief, HPPWD, Nirman Bhawan Shimla H.P. (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 16/03/2015 after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working

period of 49 and 243 ½ days during year 1998 and 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* November 1998 where she continued to work upto September 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent *vide* verbal order *w.e.f.* September 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 16.3.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner *w.e.f.* September 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wagger on 11/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleged that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Parmod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2.08.2017 for determination:

1. Whether termination of services of the petitioner by the respondents during September 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition suffers from vice of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 9/1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of

petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 49 days in the year 1998 and 243 ½ days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in September 1999, petitioner has factually worked for 49 days in 1998 and 243 ½ days in 1999 aggregating to 292 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since November 1998 till September 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Sections 25-F and 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25 H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively.

It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 16.3.2015 after about sixteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment

relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act.

In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 44 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 292 ½ days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 743/2016
Date of Institution : 18-11-2016
Date of Decision : 08-01-2018

Shri Baldev s/o Shri Laskri Ram, r/o Village Tarola, P.O. Dhawali, Tehsil Sarkaghat,
District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2
2. The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Baldev s/o Shri Laskri Ram, r/o Village Tarola, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. during 11/1999 by (i) the Engineer in-Chief HPPWD, Nirman Bhawan, Shimla-2 (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 01/01/1999 to 11/1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the month of January 1999 where he continued to work upto November 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 8.7.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 10/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of RTI information dated 13.11.2013, Ex. PW1/B, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2.8.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during November, 1999 is/was illegal and unjustified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.
4. Whether the claim petition suffers from vice of delay and laches as alleged? . . . *OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of November 1999 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of

policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* January 1999 on muster roll basis as beldar who continued to work till November 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 233 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 233 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since January 1999 till October 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25 H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim

petition were engaged and petitioner was not given offered for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after November 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 8.7.2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of November 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Id. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been

made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. vs. State of Rajasthan** in judgment of **2016** (*supra*). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 40 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 233 days in the months of January, 1999 to October, 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, (H.P.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 747/2016
Date of Institution : 18-11-2016
Date of Decision : 08-01-2018

Shri Biri Singh s/o Shri Sohan Lal, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. . .Petitioner.

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2
2. The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. . .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Biri Singh s/o Shri Sohan Lal, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. during 1999 by (i) The Engineer in-Chief, HPPWD, US Club, Shimla-2 (ii) and The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 1998 to 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1998 where he continued to work upto 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent *vide* verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 29.6.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 3/1999 who intermittently worked upto 3/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of RTI information dated 13.11.2013, Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 02.8.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent during 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged?. . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of March, 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case

may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* March 1999 on muster roll basis as beldar who continued to work till March 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 22 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 22 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since March 1999 till March, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for

reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after March 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 29.6.2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab &

Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of August 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's**

(2000), case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **one month** who was non-skilled worker ageing 53 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 22 days in the month of March, 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.15,000/- (Rupees fifteen thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 681/2016
Date of Institution : 03-10-2016
Date of Decision : 08-01-2018

Shri Prem Singh s/o Shri Mast Ram, r/o Village Langehar, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla- 2
2. The Executive Engineer HPPWD Division, Dharampur, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Prem Singh s/o Mast Ram, Village Langehar, P.O. Giun, Tehsil Sarkaghat, Distt. Mandi, H.P. during 9/1999 by (1) the Engineer-in-Chief, HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 1/1999 to 9/1999, only for 205 days, and has raised his industrial dispute *vide* demand notice dated 15.3.2015 after 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1999 where he continued to work upto September 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had unlawfully terminated by the respondent vide verbal order in the year 1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of 'Last come First go' was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication. In pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.8315/2012 which had been decided on 20.12.2012 directed the Labour Commissioner to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722**. The petitioner alleges that respondent in terminating the services of petitioner in the year 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. It is maintained that petitioner had left the job and therefore the question of any illegal act of respondent does not arise. It is also contended by the respondent that there is inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, copy of RTI information dated 13.11.2013, Ex. PW1/B, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 2.8.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during September, 1999 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition suffers from vice of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of September 1999 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also

prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent *w.e.f.* January 1999 on muster roll basis as beldar who continued to work till September 1999 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 205 days in the year 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 1999, petitioner has factually worked for 205 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since January 1999 till September, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were engaged between 1998 to 2003. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.2011 but no opportunity was given to petitioner for reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had been retrenched in 1999 and thereafter several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 4 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2002 provisions of Section 25-G of the Act could not be stated to have been violated. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 5 of the claim petition were engaged and petitioner was not given offered for

reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September 1999 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 15.3.2015 after about 16 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab &

Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Id. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of September 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Id. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Id. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's**

(2000), case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016) supra**. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 51 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 205 days in the months of January 1999 to September 1999 irrespective of fact that demand notice was issued after a period of 16 years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 394/ 2016

Sh. Ashwani Kumar s/o Sh. Gurdev, r/o Vill. Geesal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar (Pangi), Tehsil Killar, Distt. Chamba, H.P. . .Respondent.

10-01-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

10-01-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. cs. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
10-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 45/ 2017

Sh. Pyar Chand s/o Sh. Dile Ram, r/o Village Barota, P.O. Bankhandi, Tehsil Dehra,
District Kangra, H.P. . *Petitioner.*

Versus

The Principal, Delhi Convent School, V.P.O. Sunehat, Tehsil Dehra, District Kangra, H.P.
. *Respondent.*

12-01-2018 Present: None for the petitioner.
Sh. K.K. Chaudhary, adv. cs. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

12-01-2018 Present: None for the petitioner.
Sh. K.K. Chaudhary, adv. cs. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. cs. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
12-01-2018

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal
Kangra at Dharamshala, (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref. No. : 317/2014
Date of Institution : 24-10-2014
Date of decision : 16-01-2018

Shri Nand Lal s/o Shri Chingu Ram, r/o Village Nimelary, P.O. Gangoti, Tehsil Jogindernagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Jogindernagar, Distt. Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Deepak Azad, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Nand Lal s/o Shri Chingu Ram, r/o Village Nimelary, P.O. Gangoti, Tehsil Jogindernagar, District Mandi, H.P. during November, 2003 to 31.8.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Jogindernagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. Brief facts as set up in the claim petition reveal that petitioner was engaged by the B&R Department HPPWD Jogindernagar as beldar *w.e.f.* 6.4.1999 who had been given fictional breaks upto 31.8.2007 by the respondent/department. Averments made in claim petition further stipulates that the latter used to engage petitioner for 15 to 20 days every month instead of full month and that fictional breaks for 10-15 days in each month were continued to be given

deliberately by the respondent till 31.08.2007 whereas workmen of same category had been allowed to continue for 240 days in twelve calendar months. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 31.08.2007. Not only this, the persons who were working with the petitioner or joined the service after the petitioner were not given any break by the respondent deliberately. At the same time while giving artificial/fictional breaks the principle of 'Last come First go' too was not followed by the respondent and the persons junior to petitioner namely Dalip Singh, Gautam Sing, Gita Devi, Pradeep Kumar, Kishori Lal, Sanjay Kumar, Bhagmal, Nihal Chand, Anil Kumar and Chanchal worked with the respondent/department without any break and their services had been regularized by the respondent/department. It is alleged that from 6.4.1999 to 31.8.2007, claimant had requested respondent/department time and again to stop giving the petitioner fictional breaks but of no avail. It is further alleged that during fictional breaks for 15 days, claimant had remained without work and could not be employed anywhere despite his best efforts. Thus, petitioner has prayed for benefit of continuous service in which respondent had given him fictional breaks during the aforesaid period as well as petitioner be declared as to having completed 240 days during the break period and petitioner further prayed for regularization/work charge/regular beldar who be given back wages for the period of fictional breaks with all other consequential service benefits in the interest of justice.

3. The respondent contested claim petition, filed separate reply *inter-alia* taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Jogindernagar as parties to the petition. On merits admitted that petitioner was engaged *w.e.f.* 11/2003. However, it has been pleaded that the petitioner was engaged by the Executive Engineer, National Highway Division, HPPWD, Jogindernagar and that respondent's office was created in the month of January, 2004 *vide* notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January 2004 and after the creation of respondent's office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Jogindernagar, who is not a party to the case. It has been emphatically denied that any fictional breaks had been given to the petitioner at any point of time rather service of the petitioner was engaged as per the availability of the work and funds with the respondent. As and when petitioner was engaged, the same was in accordance with his verbal requests from time to time and was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. It is contended that the workmen whose names have been disclosed by the petitioner had factually worked in continuity and that their services had been regularized as per the seniority and policy of the State. It is stated that petitioner had been engaged as per availability of work and funds in every month from 11/2003 to 2007 and petitioner has been working with the respondent besides maintained that petitioner was gainfully employed as an agriculturist. It is prayed that petitioner is not entitled to any relief as has been claimed by the petitioner and accordingly petition was sought to be dismissed.

4. No rejoinder has been filed by the petitioner.

5. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Sharma, the then Executive Engineer, HPPWD (B&R) Division Jogindernagar as RW1 tendered his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of mandays of other workers Ex. RW1/C, copy of letter dated 2.1.2004 Ex. RW1/D, copy of notification dated 9th December, 2003, Ex. RW1/E and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 09.12.2015 for determination:

1. Whether time to time termination of the services of the petitioner during November 2003 to 31.8.2007 by the respondent is/was illegal and unjustified? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . . .*OPR*.
5. Whether the petition is bad on account of delay and laches on the part of petitioner as alleged. If so, its effect? . . .*OPR*.

Relief :

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar by the respondent *w.e.f.* January 1999 is not in dispute however there is dispute with regard to period for which the petitioner had factually worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner was engaged in the month of November, 2003 whereas the claimant/petitioner alleges that he had worked from 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such like situation could be drawn is that petitioner had been factually engaged *w.e.f.* November, 2003 and not from 1999. As such case of the petitioner is to be looked from angle that he had

worked since November 2003 but had claimed to have been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days so as to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently of his own choice who used to not come on his duty regularly besides petitioner willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in respondent's evidence establishing that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to petitioner and that several persons junior to petitioner namely Dalip Singh, Gautam Sing, Gita Devi, Pradeep Kumar, Kishori Lal, Sanjay Kumar, Bhagmal, Nihal Chand, Anil Kumar and Chanchal have been regularized by respondent and these persons were actually not given fictional breaks at any point of time who were engaged for continuous period in a year exceeding 240 days.

11. A bare glance at the mandays chart Ex. RW1/B would reveal that in the year 2003 petitioner had worked for 30 days, 170 days in the year 2004, 171 days in 2005, 164 days in 2006, 190 days in 2007, 351 days in 2008, 340 days in the year 2009, 333 days in the year 2010, 342 days in 2011, 356 days in 2012, 349 days in 2013, 347 days in 2014 and 90 days in the year 2015. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years petitioner had worked for more than 240 days. Thus, break in service being within a period of five years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Mandays chart Ex. RW1/C of other workers who have been regularized labourer of HPPWD (B&R) Division has also been relied upon by respondent in which all the workers named above are shown to have joined in the years from 2000, 2002, 2003 and 2004 except at serial Nos. 1 to 3 and 6 to 10 who had joined earlier to petitioner as workman at serial Nos. 5 and 6 joined in the year 2004 respectively whereas petitioner had joined in November 2003. Since respondent had not disputed to have engaged petitioner in November 2003, he ought to have been regularized having continuously worked for about 5 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with petitioner have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department *ipso facto* does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to his have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after the year 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Rajeev Sharma has admitted in cross-examination that all the labourers shown in the mandays of workers Ex. RW1/C were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the month of November 2003 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2003 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence or any charge-sheet was

raised and the version of RW1 that petitioner opted to come for work and go of his own from duty cannot be accepted which manifestly appear to be afterthought and true. Moreover, RW1 has admitted that as per record, no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional breaks given to the petitioner from November, 2003 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well as of petitioner (PW1).

13. Although, petitioner being in employment at the time of being given fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining in the year 2003 along-with other persons working with his besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non-availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2003 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when petitioner has admitted to have remained gainfully employed while working as an agriculturist having his own cultivable land. Issues in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

Issue No.3 :

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No.4:

15. In the light of my findings on the issues No.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Jogindernagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although petitioner earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division *vide* office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

Issue No.5 :

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram, s case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon

the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of January, 2017.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT -
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P. (Camp at Mandi)**

Ref. No. : 180/17

Sh. Govind Ram s/o Sh. Hukam Chand, r/o Vill. Chhatar, P.O. Podakothi, Tehsil Sundernagar, Distt. Mandi H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sundernagar, Distt. Mandi, H.P. . *Respondent.*

17-01-2018 Present: Sh. L.B. Sharma, adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. At this stage, ld. csl. for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the ld. csl. for the petitioner as stated above, the reference no. 180/17 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication at its end.
5. The file, after completion be consigned to the records.

Announced:
17-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Mandi)**

Ref. No. 235/ 2016

Sh. Rajinder Kumar s/o Sh. Mansha Ram, r/o Village and P.O. Chamned, Tehsil and Distt.
Hamirpur, H.P. . *Petitioner.*

Versus

Pradhan, Sewa Bharti Shani Dev Mandir Committee, Sarli, P.O. Lambloo, Tehsil and Distt.
Hamirpur, H.P. . *Respondent.*

17-01-2018 Present: None for the parties.

Petitioner not present despite due service as he has refused to receive notice as per report of process serving agency on record. Respondent is reported to have been served as Mandir Committee is reported to have been dissolved. Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).*

17-01-2018 Present: None for the parties.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
17-01-2018

Sd/-
(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).*

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P. (Camp at Mandi)

Ref. No. : 182/17

Sh. Sher Singh s/o Sh. Ludermani, r/o Jhahru, P.O. Podakothi, Tehsil Sundernagar, Distt. Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sundernagar, Distt. Mandi, H.P. . .Respondent.

17-01-2018 Present: Sh. L.B. Sharma, adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Heard. At this stage, ld. csl. for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the ld. csl. for the petitioner as stated above, the reference No. 182/17 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced:
17-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 479/ 2015

Sh. Hoshiar Singh s/o Sh. Parma Ram, r/o Village Chowki Khalet, P.O. & Tehsil Palampur, Distt. Kangra, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Palampur, Distt. Kangra, H.P. . .Respondent.

23-01-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

23-01-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his Id. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
23-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 51/ 2016

Sh. Meda Ram s/o Shri Chokash Ram, r/o Village and P.O. Jalgran, Tehsil Baijnath, Distt. Kangra, H.P. . .Petitioner.

Versus

1. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla.

2. The Divisional Forest Officer, Forest Division Palampur, Distt. Kangra, H.P.
..Respondents.

23-01-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

23-01-2018 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
23-01-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 247/2016
Date of Institution : 21-04-2016
Date of Decision : 23-01-2018

Shri Raj Kumar s/o Shri Dhiana Ram, r/o Village Angari, P.O. Prena, Tehsil and District
Chamba, H.P. .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P.

. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Raj Kumar s/o Shri Dhiana Ram, r/o Village Angari, P.O. Prena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as daily wages worker and has raised his industrial dispute after more than 7 years *vide* demand notice dated nil received on 08.6.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla *qua* his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No.78/2003 *vide* order dated 27.6.2003 directed respondent to reengage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2004 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not reengaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of

the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for reemployment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2004 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated 22.1.2013 whereupon petitioner had filed CWP No.148/2016 before the Hon'ble High Court of H.P. which was allowed on 23.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No.2 were admitted *qua* directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003. It is asserted that petitioner had left the job of his own sweet will in 2003 followed by filing of OA (D) No.78/2003 whereby respondent were directed to reengage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Reasserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and

2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter No.28007-10 dated 28-1-2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during March, 2004 is/was improper and unjustified as alleged? ..*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
3. Whether the claim petition is not maintainable in the present form? ..*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11 Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPWD Rakh from 1999 to 2004 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2004 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No.78/2003 qua his disengagement in the year 2003 and notional breaks who vide order dated 27.6.2003 had directed the respondent to engage petitioner subject to availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006, 2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of November, 1999 and *vide* muster roll No. 420 & 600 had been engaged merely for 14 & 14 days respectively. In the year 2000 petitioner had worked for 9 days in January, 2000, 10 days in February, 2000, 13 days in March, 2000, 6 days in May, 2000, 13 days in June, 2000, 12 days in August, 2000, 15 days in September, 2000, 13 days in October, 2000, 14 days in November, 2000 and 13 days in December, 2000 *vide* muster roll No.668, 735, 809, 988, 59, 183, 243, 309, 378, 447. In the year 2001 petitioner had merely worked in the months of January, February, March, April, May, June, July, September, October, November, and December for 12, 13, 13, 13, 15, 13, 14, 13, 14 and 12 days respectively. In the year 2002 petitioner had worked in the months of August, September, November and December 2002 for 12, 14, 13 ½ and 14 days respectively. In the year 2003 petitioner had worked in the months of January & February for 15 & 10 days. Lastly, in the year 2004 petitioner had merely worked for 15 days in March, 2004. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in November, 1999 remained engaged with respondent till March, 2004. In all, the petitioner had worked for 371 ½ days in 6 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Section 25-F, 25-G and 25-H of the Act.

12. Before advertng to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 27.6.2003 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 8.6.2011 after about 7 years. There is nothing on record to show that in these seven years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner qua time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about six years he had merely worked for 371 ½ days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued not even when he finally left the job in year 2004. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, ld. counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala, District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour P.O. Piura Sub Tehsil Dharwala District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No.344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before reengaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by ld. counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No.344/2000 which has been consequently implement *vide* letter dated 29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2004 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief *qua* engagement of petitioner is concerned, ld. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in 2013 (136) FLR 893

(SC). The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of reengagement in certain cases may award compensation. Ld. counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh in CWP No.6439/2014** decided on 9.10.2015 in which the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of Id. Dy. D.A. for respondent and Id. counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No.2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 6 years. Significantly, the judgment of Hon'ble Apex Court referred to above **(2013 supra)** has not been relied and as such the judgment of the Hon'ble Apex Court which clearly laid down guidelines needs to be followed *qua* awarding of compensation in lieu of reengagement. In the case in hand before this Court, the petitioner had merely worked about 371 ½ days in six years who has raised dispute after seven years by issuing demand notice dated 8.6.2011 and had worked merely for 371 ½ days in all six years, the petitioner in such like situation could instead of being reinstated be awarded lump sum compensation in lieu of his reengagement in service and other benefits claimed by him.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 48 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 371 ½ days from the year 1999 to March, 2004 irrespective of fact that demand notice was issued after a period of 7 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriated if a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) is awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3:

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 229/2016
Date of Institution : 21.04.2016
Date of Decision : 23.01.2018

Shri Chamno s/o Shri Bhim Sain, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. *.Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P. *.Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Chamno s/o Shri Bhim Sain, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30.5.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla *qua* his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No.81/2003 *vide* order dated 27.6.2003 directed respondent to reengage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2004 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not reengaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for reemployment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2003 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated

22.1.2013 whereupon petitioner had filed CWP No.151/2016 before the Hon'ble High Court of H.P. which was allowed on 22.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No.2 were admitted *qua* directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003. It is asserted that petitioner had left the job of his own sweet will in February, 2003 followed by filing of OA (D) No.81/2003 whereby respondent were directed to reengage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Reasserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and 2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter No.28007-10 dated 28.1.2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during March, 2004 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPPWD Rakh from 1999 to 2004 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2004 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No.81/2003 *qua* his disengagement in the year 2003 and notional breaks who *vide* order dated 27.6.2003 had directed the respondent to engage petitioner subject to availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006,

2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of November, 1999 and *vide* muster roll No.420 & 600 had been engaged merely for 10 & 14 days respectively. In the year 2000 petitioner had worked for 7 days in January, 2000, 05 days in February, 2000, 13 days in March, 2000, 6 days in May, 2000, 12 days in June, 2000, 11 days in August, 2000, 05 days in October, 2000, 10 days in November, 2000 and 13 days in December, 2000 *vide* muster roll no.668, 735, 809, 988, 59, 183, 243, 309, 378, 447. In the year 2001 petitioner had merely worked in the months of January, February, March, April, May, June, July, September, October, November, and December for 12, 11, 13, 11, 15, 13, 14, 13, 09 and 12 days respectively. In the year 2002 petitioner had worked in the months of August, September, November and December 2002 for 12, 10, 13 ½ and 14 days respectively. In the year 2003 petitioner had worked in the months of January & February for 15 & 10 days. Lastly, in the year 2004 petitioner had merely worked for 11 days in March, 2004. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in November, 1999 remained engaged with respondent till March, 2004. In all, the petitioner had worked for 329 ½ days in 6 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Section 25-F, 25-G and 25-H of the Act.

12. Before advertng to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 27.6.2003 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 30.5.2011 after about 7 years. There is nothing on record to show that in these seven years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner *qua* time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about six years he had merely worked for 329 ½ days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued not even when he finally left the job in year 2004. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the

petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, Id. Counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour, P.O. Piura, Sub Tehsil Dharwala, District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No.344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before reengaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by Id. Counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No.344/2000 which has been consequently implemented *vide* letter dated 29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2004 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief *qua* engagement of petitioner is concerned, Id. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of re-engagement in certain cases may award compensation. Id. Counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh in CWP No.6439/2014** decided on 9.10.2015 in which the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of Id. Dy. D.A. for respondent and Id. Counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No.2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 6 years. Significantly, the judgment of Hon'ble Apex Court referred to above (**2013 supra**) has not been relied and as such the judgment of the Hon'ble Apex Court which

clearly laid down guidelines needs to be followed qua awarding of compensation in lieu of re-engagement. In the case in hand before this Court, the petitioner had merely worked about 329 ½ days in six years who has raised dispute after seven years by issuing demand notice dated 30.5.2011 and had worked merely for 329 ½ days in all six years, the petitioner in such like situation could instead of being reinstated be awarded lump sum compensation in lieu of his re-engagement in service and other benefits claimed by him.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 41 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 329 ½ days from the year 1999 to March, 2004 irrespective of fact that demand notice was issued after a period of 7 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriated if a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) is awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 234/2016
Date of Institution : 21-04-2016
Date of Decision : 23-01-2018

Shri Bajro s/o Shri Dass Ram, r/o Village Bhatwara, P.O. Radi, Tehsil and District Chamba,
H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Bajro s/o Shri Dass Ram, r/o Village Bhatwara, P.O. Radi, Tehsil and District Chamba, H.P. during February, 2003 by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30.05.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla qua his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No.225/2003 *vide* order dated 26.2.2004 directed respondent to re-engage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2003 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not re-engaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for reemployment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2003 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated 22.1.2013 whereupon petitioner had filed CWP No.142/2016 before the Hon'ble High Court of H.P. which was allowed on 22.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any

compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No.2 were admitted qua directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003. It is asserted that petitioner had left the job of his own sweet will in February, 2003 followed by filing of OA (D) No.225/2003 whereby respondent were directed to re-engage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Reasserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and 2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter No. 28007-10 dated 28.1.2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during Feb. 2003 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . . . *OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . . *OPR.*

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPPWD Rakh from 1999 to 2003 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2003 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No.225/2003 qua his disengagement in the year 2003 and notional breaks who *vide* order dated 26.2.2004 had directed the respondent to engage petitioner subject to availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006, 2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of December, 1999 and *vide* muster roll No.598 had been engaged merely for 13 days. In the year 2000 petitioner had worked for 9 days in January, 2000, 10 days in February, 2000 and 10 days in March, 2000 *vide* muster roll No.665, 734, 808. In the year 2001 petitioner had merely worked in the months of June, July, September, October, November and December for 15, 08, 07, 11, 14 and 12 days respectively. In the year 2002 petitioner had worked in the months of August, September, November and December 2002 for 12, 11, 12 and 16 days respectively. Lastly, in the year 2003 petitioner had merely worked for 23 days out of in January, 2003 worked for 14 days and 09 days in February, 2003. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in December, 1999 remained engaged with respondent till February, 2003. In all, the petitioner had worked for 183 days in 5 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Section 25-F, 25-G and 25-H of the Act.

12. Before advertng to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 26.2.2004 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 30.5.2011 after about 8 years. There is nothing on record to show that in these eight years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner *qua* time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about five years he had merely worked for 183 days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued not even when he finally left the job in year 2003. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after February, 2003. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, Id. Counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour P.O. Piura, Sub Tehsil Dharwala, District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No.344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness

cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before re-engaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by Id. Counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No. 344/2000 which has been consequently implement *vide* letter dated 29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2003 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief qua engagement of petitioner is concerned, Id. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of re-engagement in certain cases may award compensation. Id. Counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh** in **CWP No.6439/2014** decided on 9.10.2015 in which the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of Id. Dy. D.A. for respondent and Id. Counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No.2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 5 years. Significantly, the judgment of Hon'ble Apex Court referred to above **(2013 supra)** has not been relied and as such the judgment of the Hon'ble Apex Court which clearly laid down guidelines needs to be followed qua awarding of compensation in lieu of re-engagement. In the case in hand before this Court, the petitioner had merely worked about 183 days in five years who has raised dispute after eight years by issuing demand notice dated 30.5.2011 and had worked merely for 183 days in all five years, the petitioner in such like situation could instead of being reinstated be awarded lump sum compensation in lieu of his reengagement in service and other benefits claimed by him.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of February, 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative**

Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **five years** who was non-skilled worker ageing 49 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 183 days from the year 1999 to February, 2003 irrespective of fact that demand notice was issued after a period of 8 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriate if a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) is awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3:

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief:

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref.No. : 231/2016
Date of Institution : 21-04-2016
Date of Decision : 23-01-2018

Shri Garbo s/o Shri Prabhu Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Garbo s/o Shri Prabhu Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30.05.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla *qua* his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No.77/2003 *vide* order dated 27.6.2003 directed respondent to re-engage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without

any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2004 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not re-engaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for re-employment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2004 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated 22.1.2013 whereupon petitioner had filed CWP no.156/2016 before the Hon'ble High Court of H.P. which was allowed on 23.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No.2 were admitted *qua* directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003. It is asserted that petitioner had left the job of his own sweet will in 2003 followed by filing of OA (D) No.77/2003 whereby respondent were directed to re-engage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Re-asserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that

petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and 2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter no.28007-10 dated 28.1.2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during March, 2004 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs. 45,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPWD Rakh from 1999 to 2004 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2004 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No.77/2003 *qua* his disengagement in the year 2003 and notional breaks who *vide* order dated 27.6.2003 had directed the respondent to engage petitioner subject to availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006, 2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of November, 1999 and *vide* muster roll No.420 & 600 had been engaged merely for 12 & 12 days respectively. In the year 2000 petitioner had worked for 9 days in January, 2000, 11 days in February, 2000, 13 days in March, 2000, 5 days in May, 2000, 14 days in June, 2000, 12 days in August, 2000, 15 days in September, 2000, 12 days in October, 2000, 14 days in November, 2000 and 13 days in December, 2000 *vide* muster roll No.668, 735, 809, 988, 59, 183, 243, 309, 378, 447. In the year 2001 petitioner had merely worked in the months of January, February, March, April, May, June, July, September, October, November, and December for 11, 11, 13, 13, 15, 13, 14, 14, 14 and 12 days respectively. In the year 2002 petitioner had worked in the months of August, September, November and December 2002 for 10, 10, 12 ½ and 14 days respectively. In the year 2003 petitioner had worked in the months of January & February for 15 & 10 days. Lastly, in the year 2004 petitioner had merely worked for 15 days in March, 2004. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in November, 1999 remained engaged with respondent till March, 2004. In all, the petitioner had worked for 358 ½ days in 6 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Section 25-F, 25-G and 25-H of the Act.

12. Before advertng to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 27.6.2003 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 30.5.2011 after about 7 years. There is nothing on record to show that in these seven years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains

that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner *qua* time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about six years he had merely worked for 358 ½ days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued not even when he finally left the job in year 2004. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, Id. Counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala, District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour, P.O. Piura, Sub Tehsil Dharwala, District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No. 344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before re-engaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by Id. Counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No. 344/2000 which has been consequently implement *vide* letter dated

29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2004 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief qua engagement of petitioner is concerned, Id. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of re-engagement in certain cases may award compensation. Id. Counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh in CWP No. 6439/2014** decided on 9.10.2015 in which the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of Id. Dy. D.A. for respondent and Id. Counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No. 2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 6 years. Significantly, the judgment of Hon'ble Apex Court referred to above **(2013 supra)** has not been relied and as such the judgment of the Hon'ble Apex Court which clearly laid down guidelines needs to be followed qua awarding of compensation in lieu of re-engagement. In the case in hand before this Court, the petitioner had merely worked about 358 ½ days in six years who has raised dispute after seven years by issuing demand notice dated 30.5.2011 and had worked merely for 358 ½ days in all six years, the petitioner in such like situation could instead of being reinstated be awarded lump sum compensation in lieu of his reengagement in service and other benefits claimed by him.

17. Id. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 51 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 358 ½ days from the year 1999 to March, 2004 irrespective of fact that demand notice was issued after a period of 7 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriated if a lump-sum compensation of Rs. 45,000/- (Rupees forty five thousand only) is

awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3:

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 248/2016
Date of Institution : 21-04-2016
Date of Decision : 23-01-2018

Shri Chain Lal s/o Shri Machloo Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P.

. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Chain Lal s/o Shri Machloo Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated-nil-received on 08.06.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla qua his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No. 82/2003 *vide* order dated 27.6.2003 directed respondent to re-engage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2004 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not re-engaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely

Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for reemployment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2004 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated 22.1.2013 whereupon petitioner had filed CWP no.147/2016 before the Hon'ble High Court of H.P. which was allowed on 22.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No.2 were admitted qua directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003. It is asserted that petitioner had left the job of his own sweet will in February, 2003 followed by filing of OA (D) No. 82/2003 whereby respondent were directed to re-engage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Reasserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and 2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter No. 28007-10 dated 28.1.2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during March, 2004 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPWD Rakh from 1999 to 2004 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2004 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No. 82/2003 qua his disengagement in the year 2003 and notional breaks who *vide* order dated 27.6.2003 had directed the respondent to engage petitioner subject to

availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006, 2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of November, 1999 and *vide* muster roll No. 420 & 600 had been engaged merely for 13 & 13 days respectively. In the year 2000 petitioner had worked for 9 days in January, 2000, 10 days in February, 2000, 13 days in March, 2000, 6 days in May, 2000, 13 days in June, 2000, 12 days in August, 2000, 15 days in September, 2000, 08 days in October, 2000, 14 days in November, 2000 and 13 days in December, 2000 *vide* muster roll No. 668, 735, 809, 988, 59, 183, 243, 309, 378, 447. In the year 2001 petitioner had merely worked in the months of January, February, March, April, June, July, September, October, November, and December for 12, 11, 13, 13, 15, 13, 14, 14, 14 and 12 days respectively. In the year 2002 petitioner had worked in the months of November and December 2002 for 13 ½ and 14 days respectively. In the year 2003 petitioner had worked in the months of January & February for 15 & 10 days. Lastly, in the year 2004 petitioner had merely worked for 15 days in March, 2004. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in November, 1999 remained engaged with respondent till March, 2004. In all, the petitioner had worked for 337 ½ days in 6 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Section 25-F, 25-G and 25-H of the Act.

12. Before adverting to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 27.6.2003 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 8.6.2011 after about 7 years. There is nothing on record to show that in these seven years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner qua time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about six years he had merely worked for 337 ½ days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner

abandoned the job, no notice had been issued not even when he finally left the job in year 2004. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, ld. counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour P.O. Piura Sub Tehsil Dharwala District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No. 344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before reengaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by ld. Counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No. 344/2000 which has been consequently implement *vide* letter dated 29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2004 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief qua engagement of petitioner is concerned, ld. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of re-engagement in certain cases may award compensation. Ld. Counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh** in CWP No. 6439/2014 decided on 9.10.2015 in which

the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of Id. Dy. D.A. for respondent and Id. Counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No. 2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 6 years. Significantly, the judgment of Hon'ble Apex Court referred to above **(2013 supra)** has not been relied and as such the judgment of the Hon'ble Apex Court which clearly laid down guidelines needs to be followed qua awarding of compensation in lieu of re-engagement. In the case in hand before this Court, the petitioner had merely worked about 337 ½ days in six years who has raised dispute after seven years by issuing demand notice dated 8.6.2011 and had worked merely for 337 ½ days in all six years, the petitioner in such like situation could instead of being reinstated be awarded lump sum compensation in lieu of his re-engagement in service and other benefits claimed by him.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 38 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 337 ½ days from the year 1999 to March, 2004 irrespective of fact that demand notice was issued after a period of 7 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriated if a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) is awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 249/2016
Date of Institution : 21.04.2016
Date of Decision : 23.01.2018

Shri Rattan Chand s/o Shri Ronki Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Rattan Chand s/o Shri Ronki Ram, r/o Village Chanehla, P.O. Preena, Tehsil and District Chamba, H.P. during March, 2004 by the Executive Engineer,, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30.05.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla qua his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No.76/2003 *vide* order dated 27.6.2003 directed respondent to re-engage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2004 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not re-engaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for re-employment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2004 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure

report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated 22.1.2013 whereupon petitioner had filed CWP no.149/2016 before the Hon'ble High Court of H.P. which was allowed on 25.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No.2 were admitted qua directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003. It is asserted that petitioner had left the job of his own sweet will in February, 2003 followed by filing of OA (D) No.76/2003 whereby respondent were directed to reengage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Reasserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and 2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter No. 28007-10 dated 28.1.2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during March, 2004 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.35,000/ per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPPWD Rakh from 1999 to 2004 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2004 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No.76/2003 qua his disengagement in the year 2003 and notional breaks who *vide* order dated 27.6.2003 had directed the respondent to engage petitioner subject to availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006,

2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of November, 1999 and *vide* muster roll No. 420 & 600 had been engaged merely for 12 & 13 days respectively. In the year 2000 petitioner had worked for 9 days in January, 2000, 09 days in February, 2000, 13 days in March, 2000, 06 days in May, 2000, 11 days in June, 2000 and 10 days in August, 2000 *vide* muster roll Nos. 668, 735, 809, 988, 59 and 183. In the year 2001 petitioner had merely worked in the month of December for 15 days. In the year 2002 petitioner had worked in the months of January, February, March, April, May, June, July, August, September, October and November 2002 for 16, 15, 11, 12, 12, 15, 05, 12, 16, 21 and 16 days respectively. Lastly, in the year 2004 petitioner had merely worked for 11 days in March, 2004. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in November, 1999 remained engaged with respondent till March, 2004. In all, the petitioner had worked for 260 days in 5 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Section 25-F, 25-G and 25-H of the Act.

12. Before advertng to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 27.6.2003 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 30.5.2011 after about 7 years. There is nothing on record to show that in these seven years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner qua time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about five years he had merely worked for 260 days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued not even when he finally left the job in year 2004. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after March, 2004. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, ld. counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala, District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour, P.O. Piura Sub Tehsil Dharwala, District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No. 344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before reengaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by ld. counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No.344/2000 which has been consequently implement *vide* letter dated 29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2004 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief qua engagement of petitioner is concerned, ld. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of reengagement in certain cases may award compensation. Ld. counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh** in **CWP No. 6439/2014** decided on 9.10.2015 in which the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of ld. Dy. D.A. for respondent and ld. counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No. 2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 5 years. Significantly, the judgment of Hon'ble Apex Court referred to above **(2013 supra)** has not been relied and as such the judgment of the Hon'ble Apex Court which clearly laid down guidelines needs to be followed qua awarding of compensation in lieu of re-engagement. In the case in hand before this Court, the petitioner had merely worked about 260 days in five years who has raised dispute after seven years by issuing demand notice dated 30.5.2011 and had worked merely for 260 days in all five years, the petitioner in such like situation could

instead of being reinstated be awarded lump sum compensation in lieu of his re-engagement in service and other benefits claimed by him.

17. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of March, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC (supra)** and that petitioner had rendered total service for **five years** who was non-skilled worker ageing 45 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 260 days from the year 1999 to March, 2004 irrespective of fact that demand notice was issued after a period of 7 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriated if a lump-sum compensation of Rs. 35,000/- (Rupees thirty five thousand only) is awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No.3 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 232/2016
Date of Institution : 21.04.2016
Date of Decision : 23.01.2018

Shri Bajro s/o Shri Chetu, r/o Village Angari, P.O. Preena, Tehsil and District Chamba, H.P.
. .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Bajro s/o Shri Chetu, r/o Village Angari, P.O. Preena, Tehsil and District Chamba, H.P. during February, 2003 by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 8 years *vide* demand notice dated 30.05.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as alleged in the claim petition revealed that petitioner was engaged as daily waged beldar in the year 1999 in Rakh Division, HPPWD Rakh where he continuously worked till 2003 uninterruptedly but respondent had given notional breaks and not allowed petitioner to complete 240 days in a year more particularly in preceding one year prior to termination. Averments made in the claim petition revealed that not only the petitioner was given intermittent breaks but was finally terminated by the respondent in the year 2003 whereupon petitioner moved before the Hon'ble Administrative Tribunal, Shimla qua his disengagement and notional break in which the Hon'ble Administrative Tribunal in OA (D) No.75/2003 *vide* order dated 27.6.2003 directed respondent to reengage the petitioner as and when work and funds were available. It transpires from the petition that after the directions so passed by Hon'ble Administrative Tribunal, the petitioner submitted copy of order to respondent but respondent had not engaged the petitioner at that time and thereafter orally told that petitioner that he would be engaged very soon. It is alleged that some junior persons namely Kaniya, Smt. Nikko Devi, Sarwan and Smt. Kamla had been engaged in the year 2000 on daily wage basis as beldars who continuously engaged without any break and they were allowed to complete 240 days in each calendar year from 2000 since they were initially engaged and in the subsequent years also. It is alleged that petitioner had been engaged and disengaged by the respondent/department malafide intention given notional break in service from 1999 till his final disengagement in the year 2003 in violation of principle of 'Last come First go' attracting provisions of 25-G of the Industrial Disputes Act, 1947 as well as in violation of principle of natural justice as sufficient work and funds were available even at the time of final disengagement. It is alleged that despite availability of funds and work, respondent had not reengaged petitioner deliberately which would also fall within the definition of unfair labour practice envisaged under Section 2 (ra) of the Act. Not only this, for non-compliance of order of Hon'ble Administrative Tribunal, Shimla, respondent had also violated provisions of Section 29 of the Industrial Disputes Act (hereinafter called 'Act' for brevity) read with Section 32 of the Industrial Disputes Act. It is alleged that after disengagement of petitioner several persons namely Smt. Puni Devi, Smt. Sheetla, Rajinder Singh, Mahinder and Rajinder s/o Sh. Dishu have been engaged in Sub Division Rakh in the year 2008 & 2009 respectively but petitioner had not been given opportunity for re-employment and thus respondent had violated provisions of Section 25-H of the Act. It is asserted that petitioner had timely approached respondent/department for his disengagement in the year 2003 as well as notional breaks which had been given from his initial appointment till the date of final disengagement but no action was taken even after the order of Hon'ble Administrative Tribunal, although new/fresh workers had been appointed in the year 2008 as well as in 2009. It is alleged that the Labour Officer-cum-Conciliation had submitted failure report under Section 12 (4) of the Act as conciliation could not be effected between parties whereafter the Labour Commissioner, Shimla declined to make reference of dispute *vide* order dated 22.1.2013 whereupon petitioner had filed CWP No.155/2016 before the Hon'ble High Court of H.P. which was allowed on 23.2.2016 in which direction had been passed to refer the dispute to this Tribunal. The grievance of petitioner remains that service of petitioner had been illegally terminated in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act. Accordingly, petitioner has prayed for his reinstatement with full back wages, in continuity in service with seniority from date of initial appointment till disengagement. Claim petition is supported with affidavit.

4. The respondent contested claim petition, filed reply *inter-alia* taking preliminary objections of maintainability, delay and laches. On merits contents of para 1 of the claim petition were admitted however it was submitted that petitioner had never worked for 240 days in any calendar year who did not fulfill requirement of Section 25-B of the Act for continuous service and as such there was neither need to serve any notice under Section 25-F of the Act nor pay any compensation in lieu thereof. It is emphatically denied that any notional break as claimed by petitioner had been given. The contents of para No. 2 were admitted qua directions passed by Hon'ble Administrative Tribunal but denied that petitioner was finally terminated in the year 2003.

It is asserted that petitioner had left the job of his own sweet will in February, 2003 followed by filing of OA (D) No.75/2003 whereby respondent were directed to re-engage the petitioner subject to availability of work and funds but petitioner never approached the respondent for work for his engagement in job. It is categorically stated that petitioner has not approached the respondent as per order of Hon'ble Administrative Tribunal. In so far persons namely Kanhaya, Smt. Niko and Sarwan are concerned, they were stated to have been engaged on the basis of harness policy of government besides Kamla Devi was senior to the petitioner. While denying principle of 'Last come First go' to have been violated by respondent, it is asserted that no junior had been retained or engaged by respondent by which petitioner could establish violation of Section 25-G of the Act. It is also alleged by the respondent that after the order of Hon'ble Administrative Tribunal, the petitioner had never approached the respondent instead raised demand notice in 2011 after about seven years without any reason or explanation. Reasserted that Smt. Puni, Smt. Sheela, Rajinder Singh, Mahinder and Rajinder were engaged as per government policy of harness. As such, there was no violation of provisions of Sections 25-G and 25-H of the Act. Thus, while denying that petitioner to have worked continuously for 240 days, respondent has maintained that no junior was retained or engaged besides no fictional breaks had been given to the petitioner. Accordingly denying cause of action, petition is sought to be dismissed. Reply of the respondent is supported with affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Asserted that some junior namely Kaniya, Smt. Nikko Devi, Sarwan, Smt. Kamla had been engaged in the year 2000 on daily wages basis and they were engaged continuously without any break whereas the petitioner had been given fictional break. It is also contended that respondent had engaged Mahinder s/o Moti, r/o Vill. Badohar, P.O. Pura, Tehsil & District Chamba, Vijay s/o Panju Ram, r/o Village Gadhaun, P.O. Rasi, Tehsil & District Chamba in the years 2012-13 and 2006-07 respectively. Thus, while reiterating his claim, petitioner prays for allowing the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Deepak Kumar, the then Executive Engineer, HPPWD Division Bharmour as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copies of letters dated 4.10.2017, 17.10.2008, 28.1.2009 and letter No. 28007-10 dated 28.1.2009 Ex. RW1/C to RW1/F, mandays chart of workers Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.10.2017 for determination:

1. Whether termination of services of the petitioner by the respondent during Feb. 2003 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . . .OPR.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief : Petition is partly allowed awarding lump sum compensation of Rs.30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner had remained engaged with respondent in Rakh Division HPPPWD Rakh from 1999 to 2003 with intermittent breaks. It is not in dispute that petitioner continued to work upto 2003 with respondent and thereafter approached the Hon'ble Administrative Tribunal filing OA (D) No.75/2003 qua his disengagement in the year 2003 and notional breaks who *vide* order dated 27.6.2003 had directed the respondent to engage petitioner subject to availability of work and funds. It is manifest from evidence on record that no persons who was junior to the petitioner was engaged or retained in service as copies of letters of respondent. Exs. RW1/C, RW1/D, RW1/E and RW1/F show that the workers mentioned therein were appointed on compassionate ground. This fact further finds support from Ex. RW1/G which showed details of regular staff of Rakh Division HPPWD Rakh, Bharmour in which names Smt. Kamla Devi d/o Hans, Smt. Punni Devi w/o Pritho, Smt. Sheela Devi w/o Man Singh, Sh. Mohinder Kumar s/o Gurdhyan, Sh. Rajinder Kumar s/o Chandu and Sh. Rajinder Kumar s/o Dishu had been shown to have been engaged by respondent as harness case who had joined in the year 1999, 2004, 2006, 2007, 2008 and 2009 respectively. Mandays chart Ex. RW1/B relied upon by the petitioner showed that he was engaged in the month of November, 1999 and *vide* muster roll Nos. 501 and 599 had been engaged merely for 10 & 11 days. In the year 2000 petitioner had worked for 9 days in January, 2000, 09 days in February, 2000, 13 days in March, 06 days in May, 2000, 09 days in June, 2000 and 12 days in August *vide* muster roll Nos. 666, 725, 810, 988, 59 and 183. In the year 2001 petitioner had merely worked in the month of June for 03 days. In the year 2002 petitioner had worked in the months of November and December 2002 for 12 ½ days and 14 days respectively. Lastly, in the year 2003 petitioner had merely worked for 14 days in January, 2003 and 10 days in February, 2003. Thus, from the mandays chart Ex. RW1/B which is proved accordance with law clearly shows that petitioner had been engaged in November, 1999 remained engaged with respondent till February, 2003. In all, the petitioner had worked for 132 ½ days in 5 years as stated above. The solitary question which crops up for adjudication in this case is if the petitioner was illegally terminated in violation of provisions of Sections 25-F, 25-G and 25-H of the Act.

12. Before advertng to the merit of case, it would be pertinent to mention here that there is no authentic evidence on record adduced by the petitioner establishing by any documentary evidence that in pursuance to order dated 27.6.2003 of Hon'ble Administrative Tribunal, petitioner had ever approached the respondent/department. The plea of petitioner that respondent had orally assured to engage him whenever he approached is not substantiated from any evidence on record and therefore this court is left with no option but to hold that petitioner had not approached respondent for job and he did not raise any dispute till demand notice dated 30.5.2011 after about 8 years. There is nothing on record to show that in these eight years petitioner had ever issued any registered letter or notice to the respondent asking for his engagement in job. That being so, the main aspect which is to be seen is that if petitioner had completed 240 days in any year in particular in preceding 12 calendar months prior date of disengagement. The plea of petitioner also remains that notional break had been given deliberately by respondent whereas other juniors were given job regularly which showed that respondent had sufficient work and funds and despite that fictional breaks had been given. It may be stated here that petitioner has not led any evidence establishing that respondent had sufficient work and funds even when time to time break in service were given but certainly it is not part of reference received from appropriate govt. In such like situation, allegation of petitioner qua time to time termination cannot be looked into and adjudicated by this court. The only aspect which is to be decided if respondent had issued any notice or liable to pay any compensation for illegal termination or retrenchment. Suffice would be state here that mandays chart Ex. RW1/B does not show that petitioner had factually worked for 240 days in any calendar year rather total period of about five years he had merely worked for 132 ½ days.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued not even when he finally left the job in year 2003. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after February, 2003. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. Hence, violation of Section 25-F of the Act is held to have not been proved by the petitioner. That being so, respondent was not required to issue any legal notice under Section 25-F of the Act and at the same time respondent was not also liable to pay any compensation in lieu thereof.

14. In so far as plea of violation of Section 25-G of the Act dealing procedure for retrenchment is concerned, Id. Counsel for petitioner has laid much emphasis on year-wise mandays detail of daily waged worker in Rakh Sub Division HPPWD Rakh showing **Vijay Kumar** s/o late Sh. Panju Ram, r/o Village Gothnu, P.O. Radi, Sub Tehsil Dharwala, District Chamba and **Manohar Lal** s/o Sh. Moti Ram, r/o Village Bhadour P.O. Piura Sub Tehsil Dharwala, District Chamba as reflected in Ex. P1 to have been engaged by respondent and the said information had been obtained under the RTI Act, 2005. The mandays chart relating to Vijay Singh is of not much relevance as he was engaged as harness case however Manohar Lal is shown to have been engaged on 1.5.2013 who had worked for 236 days in 2013, 303 days in 2014, 183 days in 2015, 285 ½ days in 2016 or 298 days in the year 2017. This document clearly shows that said Manohar Lal had been engaged on the basis of order of Hon'ble Administrative Tribunal, Shimla in O.A. No. 344/2000 and implemented by Executive Engineer, HPPWD Bharmour Division *vide* letter dated 29.4.2009. Apart from this, no seniority list has been placed on record which would show that any person junior to petitioner had been engaged. As most of the case highlighted in Ex. RW1/G are as harness

cases on which petitioner has laid emphasis in his plea as well as evidence and in absence of seniority list about which nothing has been alleged by petitioner in pleadings as well as in evidence, it would be unsafe to hold that respondent had violated in not provisions of Section 25-G of the Act.

15. In so far as violation of Section 25-H of the Act is concerned, it was incumbent upon the respondent to have issued notice to petitioner before reengaging said Manohar Lal whose name is reflected in Ex. P2 as this worker had joined on 1.5.2013. Enough has emphasized by Id. counsel for petitioner that petitioner is liable to be engaged on similar way but there is no merit in his arguments or engaging of said Manohar Lal is in pursuance to order of Hon'ble Administrative Tribunal passed in O.A. No. 344/2000 which has been consequently implement *vide* letter dated 29.1.2009 of Executive Engineer, HPPWD Bharmour. Be it stated that engagement of Manohar Lal above-named is not a harness case. Before engaging Manohar Lal, it was necessary for the respondent to have issued notice to petitioner before engaging said Manohar Lal. It can be safely concluded that petitioner who was engaged in 1999 and disengaged in 2003 had an accrued right in his favour *vide* which respondent was required to call upon petitioner to join service before engaging said Manohar Lal. That being so, respondent is held to have violated provisions of Section 25-H of the Act.

16. In so far relief qua engagement of petitioner is concerned, Id. Dy. D.A. for respondent has relied upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**. The Hon'ble Apex Court has held that Labour Court is exercise its discretion and the circumstances in lieu of re-engagement in certain cases may award compensation. Id. Counsel for the petitioner, on the other hand, has relied upon the judgment of Hon'ble High Court of H.P. titled as **State of H.P. and anr. vs. Gagan Singh** in **CWP No.6439/2014** decided on 9.10.2015 in which the CWP of State of H.P. filed by State of H.P. had been dismissed and Award dated 30.12.2011 of Labour Court was upheld. I have gone through the contentions of Id. Dy. D.A. for respondent and Id. Counsel for petitioner and if the view of that judgment of Hon'ble High Court of H.P. does not come to the rescue of the petitioner having different facts as the case before the Hon'ble High Court of H.P. petitioner had worked for 240 days preceding his date of termination as observed in para No. 2 of the judgment whereas in the case before this court the petitioner has not at all worked for 240 days even in 5 years. Significantly, the judgment of Hon'ble Apex Court referred to above **(2013 supra)** has not been relied and as such the judgment of the Hon'ble Apex Court which clearly laid down guidelines needs to be followed qua awarding of compensation in lieu of re-engagement. In the case in hand before this Court, the petitioner had merely worked about 132 ½ days in five years who has raised dispute after eight years by issuing demand notice dated 30.5.2011 and had worked merely for 132 ½ days in all five years, the petitioner in such like situation could instead of being reinstated be awarded lump sum compensation in lieu of his re-engagement in service and other benefits claimed by him.

17. Id. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of February, 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative**

Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **five years** who was non-skilled worker ageing 47 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 132 ½ days from the year 1999 to February, 2003 irrespective of fact that demand notice was issued after a period of 8 years by the petitioner but keeping in view peculiar facts and circumstances as stated above, it would be appropriated if a lump-sum compensation of Rs.30,000/- (Rupees thirty thousand only) is awarded to petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

19. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

20. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

In the Court of District Collector Solan, District Solan, H.P.

Case No. : 14/13 of 2017

Date of Institution : 17-08-2017

State of Himachal Pradesh

v/s

Sh. Narinder Singh s/o Sh. Niranjn Singh

Proceedings u/s 118 of H.P. Tenancy and Land Reforms Act, 1972.

COURT NOTICE

To

Sh. Narinder Singh s/o Sh. Niranjn Singh through his GPA Sh. Dipender Singh Rathore, resident of Village Chhgwan, Tehsil Indora, District Kangra, Himachal Pradesh (Petitioner before Hon'ble Financial Commissioner (Appeal).

Sh. Narinder Singh (Retd. I.P.S) s/o Sh. Niranjn Singh, resident of House No. 207, Sector-11, Chandigarh U.T.

Whereas, a case for the violation of section 118 of Himachal Pradesh Tenancy and Land Reforms Act, 1972 has been instituted against Sh. Narinder Singh s/o Sh. Niranjn Singh through his GPA Sh. Dipender Singh, resident of Village Chhgwan, Tehsil Indora, District Kangra, Himachal Pradesh, in respect of land comprised in Khasra No. 478/1, measuring 0-7 Bighas, situated in Mauja Garkhal, Tehsil Kasauli, District Solan, Himachal Pradesh;

And whereas, the summons were issued to Sh. Dipender Singh GPA on the address mentioned above but these have been received un-served with the report that there is no such Village by the name of Chhgwan in Tehsil Indora of Kangra district.

Now, whereas, the service of summons through ordinary course has becomes difficult.

Now, therefore, through this publication under Order 5, Rule 20 of CPC, the above person(s) are hereby informed to appear in this Court on 30-08-2018 at 2.00 P.M. either personally or through their authorized agents.

In the event of failure to comply with this notice *ex-parte* proceedings shall be undertaken without affording any further opportunity and the case shall be decided on the basis of material available on file in accordance with law.

Given under my hand and the seal of this court on 28th day of July, 2018.

Seal.

Sd/-
District Collector,
Solan, District Solan, H.P.

GENERAL ADMINISTRATION DEPARTMENT
(Confidential & Cabinet)

NOTIFICATION

Shimla-171002, the 06th August, 2018

No. GAD-C(F)10-4/2018.—The Governor, Himachal Pradesh is pleased to constitute a Co-ordination Committee for Watershed Management Projects in the State of Himachal Pradesh in which multiple Departments will co-ordinate towards effective implementation of Ridge-to-Valley approach in all Watershed Management Projects. The said Co-ordination Committee will consist of following:—

- | | |
|-----------------------------------|----------------------------|
| 1. Chief Secretary | .. <i>Chairman</i> |
| 2. Addl. Chief Secretary (UD) | .. <i>Member</i> |
| 3. Addl. Chief Secretary (Forest) | .. <i>Member</i> |
| 4. ACS (Env. Science & Tech.) | .. <i>Member</i> |
| 5. Pr. Secretary (Horticulture) | .. <i>Member</i> |
| 6. Pr. Secretary (TCP) | .. <i>Member</i> |
| 7. Pr. Secretary (Agriculture) | .. <i>Member</i> |
| 8. Secretary (I&PH) | .. <i>Member</i> |
| 9. Secretary (Rural Development) | .. <i>Member Secretary</i> |

Terms of Reference:—

- (1) Approval of Annual Action Plan and monitoring progress thereof;
- (2) Developing convergence frame among the schemes and functionaries in various Departments to achieve best results;
- (3) Identify areas where new projects could be developed for funding from Government of India and other multi lateral agencies; and
- (4) Develop ecosystem based plans combining Water harvesting and plantation works for Catchment areas protection.

By order,
Sd/-
Chief Secretary.

